84-523

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No.

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1984

Varsted C. Jizmejian,
Petitioner,

v

United States of America,
Respondent,

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

Varsted C. Jizmejian
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53 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether 42 U.S.C.A. § 659 was intended to modify or override all other United States Constitutional provisions and Statutes.

2. Whether it is Constitutional to force a defendant into a foreign forum.

3. Whether a divorce decree is an automatic judgment for arrears of alimony.

4. Whether Federal Courts have jurisdiction in cases of denial of Due Process of Law when devorce related.

5. Whether 42 U.S.C.A. § 659 is impartial and affords equal protection of the law to all people as required by the 14th Amendment of the United States Constitution.

6. Whether judgment entered by courts without Due Process of Law are valid because they appear to be valid on its face.

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NO. _____

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Varsted C. Jizmejian,

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v.

United States of America,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Petitioner, Varsted C. Jizmejian, prays that Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Federal Circuit, entered in this case on 26 July 1984.

OPINION

A copy of the unpublished opinion of the Court of Appeals in this cause is appended hereto as Appendix 1.

JURISDICTION

The jurisdiction of this court is invoked because of the denial of Due Process of Law and the opportunity to raise an adequate defense. The jurisdiction of the court is invoked under provisions of 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth and Fifth amendments to the United States Constitution.

STATUTES INVOLVED

The statutes involved in this case is 42 U.S.C.A. § 659, applicable paragraphs are quoted in the United States Claims Court opinion. Appendix II.

STATEMENT OF THE CASE

The petitioner, Varsted C. Jizmejian filed this action in the United States Court of Appeals for the Federal Circuit, alleging that the United States, withheld monies due him as prescribed by Chapter 871 - Computation of Retired Pay, Title 10 United States Code Services. He further alleged that the with holding of monies were unconstitutional in that his rights under the Due Process Clause of the Fourteenth Amendment and Fifth Amendment of the United States Constitution were denied and circumvented.

On 26 July 1984 the United States Appeals Court affirmed the decision of the Claims Court, Appendix I.

STATEMENT OF FACTS

The petitioner was married in Waukegan, Illinois in 1947 and was living there when, in 1951 due to the

Korean conflict, he was recalled to active duty. Petitioner remained on active duty until his retirement on 31 March 1970. Petitioner and his wife arrived in Arizona in September 1964 and resided in an off base rented house.

On the 2nd day of August 1966, Petitioner was served with a Complaint (Domestic Relations) and Order to show cause No. 97053, in the Superior Court of Arizona in and for the County Pima. A hearing was held on the 8th of August 1966, in the court of the Honorable John P. Collins, Judge, petitioner's wife was awarded $300.00 per month for support and maintenance, pendant lite.

In September of 1967, in the court of the Honorable Robert O. Royiston, petitioner's wife was awarded a separation from Bed and Board and alimony of $350.00 per month for one year and $250.00 per

month thereafter, plus attorney fee of $300.00 and $138.42 in court costs.

On 31 March 1970, petitioner retired from the Air Force and departed from the State of Arizona. On the 10th of June 1970, petitioner was served with a summons in Las Vegas, Nevada, to appear in the Superior Court of Arizona, case N. 119857. Appearance was made on 4 January 1971, in the court of the Honorable Ben C. Birdsall, Judge. The trial was recessed at approximately twelve noon and set for 3:45 P.M. the same day. The petitioner's wife's attorney was one hour late for the afternoon session. At approximately five o'clock the court stated that the trial would be continued the following day, petitioner's wife's attorney stated hewould be unable to appear, petitioner's attorney stated that he also would not

be able to appear. The Court than stated, words to the effect, "well wrap it up, ask him another question." The petitioner did not get to finish answering the question he was asked which was the first of a series of questions he had requested to be asked in order that he may rebut his wife's charges. Petitioner asked his attorney to protest this action by the court and also the fact that petitioner was required to take the stand and be cross examined before he was examined. Petitioner was informed by his attorney that he would have to wait for the court's decision before any such action could be taken. After his appearance for the court trial on 4 January 1971 petitioner departed the State of Arizona and has not since returned.

On 3 March 1971 petitioner's

attorney informed him that a divorce decree was rendered, awarding his wife a divorce and $300.00 per month alimony and $6000.00 for community property, although there was no property in the State of Arizona and petitioner was from Illinois which is not a community property state. Petitioner informed his attorney to appeal the matter to the next higher court as discussed at the close of the trial. As a result of the appeal an amended divorce decree was rendered on 3 April 1972, deleting the community property of $6000.00 and affirming divorce decree and $300.00 per month alimony. When informed of the decision of the Appeals Court, petitioner requested matter to be taken to the next higher court. Petitioner's attorney refused and stated that it could not be taken any further. Petitioner than

stated he would not need his services and would pursue the matter without him. The petitioner was unaware at this time that the items that he asked his attorney to protest were not put in the appeal and that the appeal was made by another attorney.

A petition for Order to Show Cause was filed on 18 April 1972 by petitioner's wife. Records indicate this was served on the petitioner's former attorney. Although he advised the court he no longer represented the petitioner, he was not permitted to withdraw his name until after the above action came up for hearing. The above action conducted in the Superior Court of Arizona, in the court of the Honorable Mary Anne Richey, Judge, resulted in a judgment for arrears of alimony for $1800.00. There was no evidence in the court proceedings to

indicate whether the petitioner (than defendant) did or did not appear or whether counsel did or did not appear. The record appears to be mute in this respect for some unknown reason.

No known action was taken to enforce this judgment until on or about 24 september 1975, when petitioner's wife filed a Writ of Garnishment pursuant to Public Law 93-647 42 U.S. CODE, Section 659 on the said $1800.00 judgment. On 11 Nov. 1975 petitioner recieved notice that Garnishment served 24 September was invalid. In December 1975 this was re-instated.

ARGUMENT

The position of the United states, the U.S. Claims Court (Appendix II) and U.S. Court of Appeals (Appendix I), is that this matter is res judicata because petitioner appeared in Arizona in the divorce suit, asked for a new trial, appealed the lower court order to Arizona Court of Appeal; and that he won a partial reversal.

The petitioner did not ask (move) for a new trial, nor did the petitioner hire the attorney who made the appeal, or asked that the items that were in the appeal to be appealed. The petitioner asked that his attorney protest the Courts cutting him off from his testimony and being cross examined before he was examined.

The Court abused its authority when it divided property not within the State of Arizona.

BROWN v. FLETCHER'S ESTATE,
210 U.S. 82

Every State has exclusive juris-
diction over the property within its
borders. Overby v. Gordon, 177
U.S. 214. We make this extract from
the opinion of Mr. Justice White in
that case. p. 222:

"To quote the language of Mr. Chief
Justice Marshall, in Rose v. Himley,
4 Cranch, 241, 277; "It is repug-
nant to every idea of a proceeding
in rem to act against a thing which
is not in the power of the sover-
eign under whose authority the court
proceeds; and no nation will admit
that its property would be abso-
lutely changed, while remaining in
its own possession, by a sentence
which is entirely ex parte."

One of these principles is, that
every State possess exclusive juris-

diction and sovereignity over persons and property within its territory ..... The other principle of public law referred to follows from the one mentioned; that is, that no State can exercise direct jurisdiction and authority over persons or property without its territory.

Story, Confl. Laws, c.2; Wheat. Int. pt.2, c.2.

GROVER & BARBER SEW. MACH. CO. v. RADCLIFFE, 137 U.S. 287

A law which substitutes constructive for actual notice is binding upon persons domiciled within the State where such law prevails, and as respects the property of others there situated, but can bind neither person nor property beyond its limits. This rule is based upon international law, and upon that natural protection which every

country owes its citizens. It concedes the jurisdiction of the court to the extent of the State where the judgment is rendered, but upon the principle that it would be unjust to its own citizens to give effect to the judgments of a foreign tribunal against them when they had no opportunity of being heard, its validity is denied.

The United States also takes the position that 42 U.S.C. § 659 has supremacy over the United States constitution and that individual constitutional rights are fully protected under it.

"At the same time, the rights of employees and retirees are protected because they are promptley notified when the writ is served."

The United states has entered into a

conspiracy with the Congress of the United States and the States to force, inveigle and lure individual defendants into the foreign forum, to give them full jurisdiction, in violation of ones constitutional rights. The protection of these constitutional rights should be the first duty of the government.

MARBURY v. MADISON, 1 Cranch 137

> The very essance of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. <u>One of the first duties of government is to afford that protection</u>.
>
> The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if

the law furnish no remedy for the violation of the vested right.

The judicial power of the United States is extended to all cases arising under the Constitution.

It is also not entirely unworthly of observation, that in declaring what shall be the supreme law of the land, the Constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank.

Thus, the particular phaseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void; and that courts, as well

as other departments, are bound by that instrument.

MARTIN v. HUNTER'S LESSEE 14 U.S. 304

The Constitution has presumed (whether rightly or wrongly we do not inquire) that state attachments, state prejudices, state jealousies, and state interest, might sometimes obstruct or control, the regular administration of justice. Hence in controversies between states; between citizens of different states ..... it enables the parties, under the authority of Congress, to have the controversies heard, tried, and determined before the national tribunals. (P-347)

The United States claims:

"It also creates an unmanageable burden for federal disbursing officers by forcing them to make complex legal

determinations on limited information."

"Determining whether such claims are substantial or non-frivolous is a task beyond the capabilities of federal disbursing officer."

"Even if the facts in a particular instances are known and undisputed the disbursing officer would often face additional hurdles of legal interpretation. Evaluating jurisdictional claims would be extremely time-consuming and would require considerable legal skill."

"In the first place there is no satisfactory way for disburing officers to ascertain the relevant facts."

The petitioner is at a loss to under stand the plight of the United States in this regard, since each installation where disbursing officers are located there is also a Staff Judge Advocate and qualified lawyers who are also members of

the service. Surely the legal p ople the government hires are qualified to make legal decisions.

The United States also states that without 42 U.S.C. § 659:

"It places an unmanageable burden on the federal government."

"The government would be forced to support one side in a domestic conflict where issues are directly pertinent only to the parties involved."

"The government is drawn into marital disputes and undue administrative expense."

The United states will spend approximately Twelve billion dollars on foreign aid this year alone, to those of whichsome haven't raised a little finger in the defense of our nation, nor will they ever. Yet, according to some representatives of our government, to spend a few dollars to see that the

rights of military retirees who have risked their lives, spilled their blood and lost limbs, are up held would be a costly and unmanageable burden.

UNITED STATES SUPREME COURT DIGEST

Key 27 Constitutional Law

a. U.S. La. 1875. The Fourteenth Amendment (U.S.C.A. Const.) prohibiting states from denying to any person the equal protection of the laws, did not add anything to the rights which one citizen has under the Constitution against another. The only obligation resting upon the United States is to see that the State does not deny this right; and the power of the national government is limited to the enforcement of this guaranty.

251 Constitutional Law

a. U.S. Mass. 1864. Common justice requires that no man shall be condemned in his person or property without notice and

opportunity to make defense.

b. U.S. La. 1873. One should not be condemned as to person or property without an opportunity to be heard.

This court has stated in a previous opinion the statute (42 U.S.C. §659) was enacted to remedy the plight of persons left destitue because they had no speedy and efficacious means of ensuring that child support and alimony would be paid ....."what this really means is that civil servants an military personnel can be forced to accept full responsibillity for care of families -- especially dependent children -- in the same way that other Americans can.

"It is tragic that there are many men or women in the United States who would willingly desert their children, leaving wives and families to struggle alone or to go on our already overburdened welfare

rolis.

We must give the wives and children of Federal employees and retirees the same legal protections which we have provided for all other American women and children."

The court should be aware that there are no children involved nor has there ever been any children involved. There is no destitute wife involved nor has there ever been a destitute wife involved. The petitioner should not be held responsible for action of others.

The Courts (District, Claims, and the Court of Appeals) and the Respondant claim the Arizona Superior Court and Appeals Court find they still have jurisdiction over the petitioner. However, the Arizona Supreme Court ruled that neither the Superior Court or the Appeals Court have jurisdiction over party or parties not domiciled in the State of Arizona.

JOHNSON v. JOHNSON 462 P2d 782
S.Ct. AZ. In Banc

* * * (6) Our holding that the trial court lacked jurisdiction to change custody of Alan johnson disposes of the issue of Mrs. Johnson's alleged contempt. Therefore, the contempt judgment is of no force or effect.

The decision of the Court of Appeals is vacated; The judgment of the Superior Court relating to custody and contempt is vacated; the judgment regarding payments of alimony and child support is reversed. * * * (P-791)

IN RE HUGHES, 237 P2d 1009, S.Ct. Az. * * * In view of the facts in this case showing clearly that Barbara Lynn was not only physically outside the state of California but also legally domiciled in the State Arizona at time the above mentioned decree was modified, we hold that the modification is void and without

force and effect. At the time of the hearing, in the lower court, the original California decree awarding custody of Barbara Lynn to her father, Samuel, was still valid and binding upon the parties, and respondant Samuel had rightful custody of Barbara Lynn. * * * (P-1011)

BIGELOW v. OLD DOMINION COPPER,
225 U.S. 111

* * * The requirement of full faith and credit is to be read and interpreted in the light of well established principles of justice protected by other constitutional provisions which it was never intended to modify or override. *** * * * Mr. Justice Story, in his commentaries on the conflict of Laws, §609, Says:

"It (the Constitution) did not make the judgments of other states domestic judgments to all intents and purposes, but only gave a general validity, faith,

and credit to them as evidence. No execution can issue upon such judgments without a new suit in the tribunals of other states. And they enjoy not the right of priority, or privilege, or lien which they have in the state where they are pronounced, but that only which the Lex fori gives to them by its own laws in their character of foreign judgments."

* * * (P-134)

* * * No judgment can be regarded as res judicata as to any matter where the right in the subject-matter arise out of mutuality, and not by succession, unless the party could, as matter of right, appear and defend, even though he may have had knowledge of the suit. otherwise, he might be bound by a judgment as to which he had never had the opportunity to be heard, which is opposed to the first principles of justice. * * * (P-131)

15 U.S.C.A. § 1677 RESTRICTION ON GARNISHMENTS

§ 1677 Effect on State Laws

This subchapter does not annul, alter or effect, or exempt any person from complying with, the laws of any State

(1) prohibiting garnishments or providing for more limited garnishments than are allowed under this subchapter,

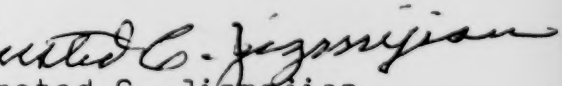
CONCLUSION

The United States by placing itself in the so called role of a private person under Public Law 93-647, 42 U.S.C. § 659, is no more than a means of deception and camouflage to place the property of the petitioner in the foreign forum to assist in the enforcement of Ex Parte and invalid judgments and to circumvent, annul, and evade Constitutional prohibitions. This circuitous entrapment of the petitioner into a foreign forum, in which the presiding justice is an elected official

by the citizens of the State, is a complete disregard for the petitioner's constitutional rights under the Fifth and Fourteenth amendments.

For the reasons set forth, it is respectfully submitted that this Petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit be granted.

Respectfully submitted,



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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

VARSTED C. JIZMEJAIN,
Appellant,

v. No. 84-890

THE UNITED STATES,
Appellee,

DECIDED: July 26, 1984

Before FRIEDMAN, BENNETT and NEWMAN
Circuit Judges.

NEWMAN, Circuit Judge.

DECISION

The decision of the United States Claims Court granting summary judgment for the government and dismissing appellant's complaint is affirmed.

OPINION

The Claims Court properly held that appellant's claim, for recovery of retirement pay withheld under a writ of garnishment, was barred by the

doctrine of res judicata.

In a previous suit brought in the United States District Court of South Carolina, Jizmejian v. Department of Air Force. 457 F. Supp. 820, aff'd mem., 607 F.2d 1001 (4th Cir. 1979), cert. denied, 444 U.S. 1082 (1980), appellant sought recovery of the amounts withheld from his retirement pay pursuant to writs of garnishment. Appellant contended that the writs of garnishment and underlying divorce decreee and support judgment were invalid because the Arizona state court lacked personal jurisdiction over him. The district court disagreed, holding that the Arizona court had personal jurisdiction and that, under 42 U.S.C. § 659(f), the government was immune from his suit. Id. at 824.

The present case is an appeal from the Claims Court where the appellant

argued that the Arizona show cause orders and writs of garnishment were invalid because the Arizona court lacked personal jurisdiction over him. The Claims Court found the claims in this and the South Carolina actions to be identical and that the doctrine of res judicata applied. The Claims Court properly found that appellant change in emphasis from attacking the divorce decree in the first case, to attacking the show cause orders in the second case, was immaterial. The doctrine of res judicata bars the appellant from attempting to relitigate the same cause of action under a theory which he could have raised in the first case. Container Transport International v. United States, 468 F.2d 926, 928 (Ct. Cl. 1972). The Claims Court also concluded the appellant had received fair and full consideration in the first case by a court of competent

jurisdiction. Appellant's arguments do not persuade us that the Claims Court erred.

Appellant's argument that 42 U.S.C. §659(f) cannot grant the government immunity for honoring a writ "regular on its face" as it would deprive him of his due process rights, and his request that this court go beyond the face of the writ and explore the alleged jurisdictional defects, are unavailing in view of the recent Supreme Court decision, United States v. Morton, 52 U.S.L.W. 4839 (U.S. June 19, 1984). Construing the same statute, the Supreme Court in Morton declared that the government cannot be held liable for honoring a writ of garnishment which is "regular on its face" and has been issued by a court with subject matter jurisdiction to issue such orders. Reversing the Claims Court

and this court, the Supreme Court held that the statute does not require an issuing court to have personal jurisdiction over the obligor, and that any inquiry into that question cannot "be squared with the plain language of the stature, which requires the recipient of the writ to act on the basis of the 'face' of the process." Id. at 4841. Further, the Supreme Court noted that to hold the government liable for honoring a writ would be inconsistent with The law applicable to private garnishees, who generally are not so liable; the legislative intent was to put the government in the same position. Lastly, the Supreme Court held that to require the government to go beyond the "face" of each writ of garnishment and determine its validity would frustrate the fundamental purpose of the statute,

namely "a speedy and efficacious means of ensuring that their child support and alimony would be paid." Id. at 4842 and n.16.

Thus, both the doctrine of res judicata and the Morton decision require this court to deny appellant's request that we reexamine the underlying jurisdictional questions. The Claims Court decision is affirmed.

IN THE UNITED STATES CLAIMS COURT

No. 364-82C

(Filed February 1, 1984)

VARSTED C. JIZMEJIAN	)	Military pay;
	)	retirement pay;
v.	)	funds withheld;
	)	garnishment writs
THE UNITED STATES	)	from state court;
	)	jurisdiction of
	)	state court; res
	)	judicata.

Varsted C. Jizmejian, San Antonio, Texas, Plaintiff, Pro Se.

Mary Mitchelson, with whom were Assistant Attorney General J. Paul McGrath, David M. Cohen, and Thomas W. Petersen, Washington, D.C., for defendant. Major Sam Roser, Department of the Air Force, of Counsel.

OPINION

ON DEFENDANT'S MOTION TO DISMISS OR IN THE ALTERNATIVE FOR A SUMMARY JUDGMENT

WHITE, Senior Judge.

The plaintiff, Varsted C. Jizmejian, instituted this action Pro se in the

United States Court of Claims (this court's predecessor) on july 22, 1982. The case was automatically transferred to this court on October 1, 1982, pursuant to section 403 (d) of the Federal Courts Improvement Act of 1982 (Pub. L. 97-164, 96 Stat. 25, 58).

The plaintiff, a retired Air Force officer, seeks to recover retirement pay in the amount of $41,169 (plus interest), which has been withheld by the Air Force in response to writs of garnishment from an Arizona state court. The plaintiff's pay has been garnished to enforce a divorce decree and judgment for support payments entered by the Arizona court.

The case is before the court on the defendant's motion to dismiss or, in the alternative, for a summary judgment, filed October 6, 1983, the plaintiff's response, filed October 26, 1983, and the

defendant's reply, filed November 9, 1983, together with other papers submitted by the parties.

It is concluded that the defendant's alternative request for a summary judgment should be granted.

The Facts

The plaintiff and his former wife married in 1947. The marriage took place in Illinois; and the plaintiff and his then wife were living in Illinois when, in 1951, the plaintiff entered upon an extended tour of active military duty with the Air Force. This duty involved overseas service in Korea and in Vietnam.

Upon the plaintiff's return from Vietnam in 1964, he was assigned to an Air Force base in Arizona. The plaintiff and his wife resided in Arizona until domestic difficulties caused their separation in 1967.

Subsequently, in 1970, the plaintiff retired from the Air Force and moved to Nevada.

The plaintiff's wife initiated a divorce action against him in the Superior Court of Arizona in and for the County of Pima. The plaintiff was personally served in Nevada with a copy of the Arizona summons and complaint, and he appeared in, and contested, the divorce action.

On March 4, 1971, the Pima County Superior Court issued a divorce decree, awarded $300 per month to the wife for her support, and divided the couple's property between them.

After the plaintiff's request for a new trial was denied by the trial court, he appealed the decision to the Arizona Court of Appeals. The plaintiff asserted on appeal that no grounds were shown for divorce, that the alimony award was too

high, and that the division of property was erroneous. The plaintiff, however, did not challenge the jurisdiction of the trial court to decide the divorce action. The appellate court in 1972 upheld the divorce decree and the alimony award, but reversed the trial court's decision on the division of property. No appeal was taken to the Arizona Supreme Court.

Based on the modified decree, the plaintiff's former wife quickly filed in the Pima County Superior Court a motion to show cause why the plaintiff should not be held in contempt for failure to comply with that court's support order. The plaintiff was not present in Arizona at the time and did not appear in response to the order to show cause. On May 25, 1972, the Superior Court entered a judgment against the plaintiff for arrearages totaling $1,800.

As the plaintiff was not in Arizona, the judgment could not be enforced.

Subsequently, the plaintiff's former wife secured writs of garnishment to the Air Force on the plaintiff's retirement pay pursuant to 42 U.S.C. § 659 (1976), in order to satisfy the support judgment, section 659 then provided in pertinent part as follows:

> *** moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States *** to an individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to *** make alimony payments. 1/

The Air Force honored the Arizona court's writs and began to withhold portions of the plaintiff's retirement pay. The funds so withheld were remitted to the clerk of the Arizona court.

In 1977, the plaintiff was again adjudged in contempt of the Pima County Superior Court's support decree. This time, the arrearages amounted to $17,000. The plaintiff did not enter an appearance in that proceeding. The Air Force continued to honor writs of garnishment from the Pima County Superior Court by withholding funds from the plaintiff's retirement pay and remitting the funds to the clerk of the Arizona court.

Related Proceeding

The plaintiff instituted an action against the Department of the Air Force in the United States District Court for the District of South Carolina, asking the district court to require the Air Force to pay him amounts withheld from his retirement pay. The plaintiff's main contention in the district court was that the Pima County Superior court did

did not have personal jurisdiction over him, thus rending the support decree and the writs of garnishment invalid.

The Government moved to dismiss the district court case for failure to state a claim upon which relief could be granted. The government argued that subsection (f) of 42 U.S.C. § 659, as amended by section 501 of Public Law 95-30 (91 Stat. 126, 158), did not permit a collateral attack on the validity of the Arizona state court judgment. Subsection (f) provided at the time -- and still provides (42 U.S.C. § 659 (f) (Supp. V 1981) -- as follows:

> Neither the United States, any disbrusing officer, nor governmental entity shall be liable with respect to any payment made from moneys due or payable from the United States to any individual pursuant to legal process regualar on its face, if such payment is made in accordance with this section and the regulations issued to carry

out this section.

The district court examined the opinion of the Arizona Court of Appeals, the writs of garnishment, and the Arizona trial court's 1977 contempt decree. The court, in Jizmerjian [sic] v. Department of Air Force, 457 F. Supp. 820, 823, aff'd mem., 607 F. 2d 1001 (4th Cir. 1979), cert. denied, 444 U.S. 1082 (1980) found:

> *** that plaintiff was personally served in Nevada with a copy of the Arizona summons and complaint in the divorce action; that he appeared and contested that action -- (since he moved for a new trial, which was denied) that he appealed the lower court Order to the Arizona Court of Appeals; and that he won a partial reversal. *** [Footnote omitted.]

Because of the plaintiff's appearance in the Arizona divorce suit, the district court held that the Arizona court had personal jurisdiction over the plaintiff and could validly render the

alimony decree. Id. at 823-24 & n.6. Accordingly, the district court decided (id. at 824) that, under 42 U.S.C. § 659 (f), the Arizona court's decree and writs of garnishment insulated the United States from the plaintiff's suit.

The district court's decision was affirmed by the Fourth Circuit, and the Supreme Court denied certiorari.

The Present Litigation

After failing to obtain relief in the United States District Court for the District of South Carolina, the plaintiff filed the present action in the United States Court of Claims (this Court's Predecessor) on July 22, 1982. In the Complaint, 2/ the plaintiff alleges that the proceedings before the Pima County Superior Court on the orders to show

2/ Denominated a petition under the rules of the Court of Claims.

cause, resulting in the issuance of writs of garnishment to the Air Force, were invalid because the plaintiff was a non-resident of Arizona at the time, there was no personal service of process on him within the State of Arizona, and he did not appear in such proceedings. Consequently, according to the plaintiff, it was unlawful for the Air Force to withhold $41,169 from his retirement pay (as of may 19, 1982) pursuant to the writs of garnishment. The plaintiff demands judgment against the United States in the amount of $41,169, plus other relief.

The Government's motion, which is now before the court for consideration, states four grounds for the dismissal of the action or, in the alternative, for a summary judgment. One of these grounds is that the plaintiff's claim is barred

by the doctrine of res judicata, in view of the previous decision Jizmerjian v. Department of Air Force, Supra. It is not necessary to consider the defendant's other contentions.

Discussion

Under the doctrine of res judicata, a final judgment on the merits by a court of competent jurisdiction prohibits the same parties (or their privies) from subsequently relitigating the same cause of action. Commissioner v. Sunnen, 333 U.S. 591, 597 (1948). As the Court of Claims once succinctly stated: "*** a final decision on the 'merits' of a claim bars a subsequent action on that same claim or any part thereof, including issues which were not but could have been raised as part of the claim.***" Container Transport International v. United States, 199 Ct. Cl. 713, 717, 468 F. 2d 926, 928

(1972). This rule fosters the conclusive character of judgments because, although "*** [e]veryone is entitled to a full and fair consideration of a claim, ***once it has been ruled on, litigation must end. ***" Sterner v. United States, 2 Cl. Ct. 253, 254 (1983).

The plaintiff's claim in the present action for retirement pay withheld by the Air Force is identical with that asserted and decided in the District Court for the District of South Carolina. Plaintiff contends here -- as he did in the district court -- that the garnishment writs issued by the Arizona court were invalid for due process insufficiencies, and should not have been honored by the Air Force. The circumstance that in the district court case the plaintiff centered his attack on the divorce decree and support judgment, whereas his primary attack here is on the

order to show cause proceedings, is immaterial. The cause of action asserted here is the same as that litigated in the district court; and the same objections made here could have been raised before the district court.

The district court has already rejected this same claim. The district court decided that the Arizona Court had personal jurisdiction over the plaintiff, that the alimony decree was valid, that the decree and subsequent writs of garnishment insulated the Air Force against legal action by the plaintiff, and that the plaintiff was not entitled to recover on his claim for funds withheld by the Air Force from his retirement pay. Jizmerjian v. Department of Air Force, supra, 457 F. Supp. at 823-24.

Res judicata bars relitigating the plaintiff's claim here, because it has already received a full hearing and

final judgment from a court of competent jurisdiction. This would still be so even if this court, on the basis of Morton v. United States, 708 F. 2d 680, 685 (Fed. Cir. 1983), were inclined to question the decision of the District Court for the District of South Carolina in Jizmerjian v. Department of Air Force, supra. The Supreme court has made it clear that "*** the res judicata consequences of a final, unappealed judgment on the merits [is not] alteredby the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case. ***" Federated Department Stores, Inc. v. Moitie, 452 U?S? 394(1981)

Conclusion

The court concludes, on the basis of the pleadings and the other papers submitted by the parties, that there is no genuine issue as to any material fact

necessary for the disposition of this case, and that the defendant is entitled to a judgment as a matter of law.

The portion of the defendant's motion of October 6, 1983, asking for a summary judgment is granted.

The complaint will be dismissed.

IT IS SO ORDERED.